83-1159

No.

Office - Supreme Court, U.S.
FILED
DEC 17 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

In The Matter of The Estate of
WILLIAM KUNTZ

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE
SECOND DISTRICT MONTGOMERY COUNTY, OHIO

WILLIAM KUNTZ, III
Pro Se
P.O. Box 461
Lake Placid, New York 12946-0461
1-800-824-7888

(For Further Appearances See Reverse Side Of Cover)

James T. Lynn, Jr.
Attorney for the Estate
First National Plaza, 14th Floor
Dayton, Ohio 45402
(513) 224-1981

Robert B. Crew
Joseph P. Buchanan
Attorneys for Winters National Bank and Trust Co.
2800 Winters Bank Tower
Dayton, Ohio 45402
(513) 223-6211

David S. Ginger
Attorney for Paul W. Heintz
267 Regency Ridge
Dayton, Ohio 45459
(513) 434-7114

Questions Presented

Whether federal courts May Entertain suits where a National Banking Institution has exercised powers enacted by Congress under provisions of the Federal Reserve Bank Act approved December 23, 1913 being Section 11(k) as affirmed as within the power of Congress within Article 1, 8, clause 18 in *First National Bank vs. Union Trust Co.*, 244 U.S. 416?

Whether the confusion and conflict in the application of Sections 6166 and 6166A of the Regulations Of The Commissioner of Internal Revenue and the Operation Of State Law of Inheritance create an Article III Case and Controversy wherein Mandamus does not lie under the decision of the United States Tax Court in *Lane v. United States*, 822 U.S.T.C. 13,473 (D. Mass. 1982)?

That plain error in the decision of a State Court matter based upon state law is reviewable by the Supreme Court of the United States if the United States could have been a party or has a substantial interest in the outcome?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
OPINIONS BELOW	1
JURISDICTIONS	1
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED	2
STATEMENT	2
THE PROCEEDINGS IN THE CASE	3
GRANTING	7

APPENDIX

APPENDIX A	A-1
APPENDIX B	A-2
APPENDIX C	A-3
APPENDIX D	A-4
APPENDIX E	A-5
APPENDIX F	A-6

TABLE OF AUTHORITIES

	Page
Berkey v. Third Ave. Co., 244 N.Y. 84,94	8
Cohens v. Virgina,6 Wheat (19 U.S.) 264,404	10
Crowell v. Benson, 285 U.S. 22,94	5
Evangelical Luth. Church v. Sablem, 254 N.Y. 161,167	7
Fernandez v.Weiner, 326 U.S. 340,353	8
First National Bank of Bay City v. Fellows, Attorney General of the State of Michigan	2
First National Bank v. Union Trust Co., 244 U.S. 416	i
Gregory v. Helvering, 293 U.S. 465,469	5
Lane v. United States, 822 U.S.T.C. 13, 473	5
Locke v. United States, 7 Cranch (11 U.S. 339,347)	9
Maple Floor Mgf. Assoc. v. United States, 268 U.S. 563, 587	9
North America Co. v. SEC, 327 U.S. 686,693	8
Plumley v. Massachusetts, 155 U.S. 461,479	9
SEC v. Chenery, 318 U.S. 80,92	5
Union Pacific Railway v. Botsford, 141 U.S. 250,258	8
Upton v. Tribilock I. Otto, (91 U.S.) 45,48	9
Wheeler v. Denver, 229 U.S. 342,350	5

IN THE

Supreme Court of the United States

October Term, 1983

IN THE MATTER OF THE ESTATE OF WILLIAM KUNTZ

PETITITON FOR A WRIT OF CERTORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT MONTGOMERY COUNTY, OHIO

William Kuntz, III, Displaced executor of the estate of William Kuntz, appearing *pro se*, petitions for a *writ of certiorari* to review the Judgment of the Court of Appeals for the Second District of Montgomery County, Ohio.

OPINIONS BELOW

The Opinion of the Court of Appeals was rendered on the 19th day of May, 1983 in Case Number 7355, reviewing the Findings and Conclusion of the Probate Court of Montgomery County, Ohio Case 231191 Docket 290.

JURISDICTIONS

The Final Judgment of The Court of Appeals was entered on May 31, 1983. A Notice of Appeal to the Supreme Court of Ohio was filed July 26, 1983 to have The Court of Appeals certify it's Record to the Supreme Court. In Supreme Court Case No 83-1153.

This was overruled on September 21, 1983. Petitioner asserts that jurisdiction is available in the Supreme Court turning on among others the Federal Reserve Act passed into law on December 23, 1913 as affirmed by this court in the case of *First*

National Bank of Bay City v. Fellows, Attorney General Of The State Of Michigan, on the relation of the Union Trust Company, *et. al* being Case Number 764 of the October Term of 1916 argued March 22, 23 1917—Decided June 11, 1917 244 U.S. 416.

CONSTITUTIONAL PROVISIONS, STATUES AND REGULATIONS INVOLVED

The Federal Reserve Act of December 23, 1913, generally Section 11(k). Sections 6166 *et seq* of the Internal Revenue Code with regards to the payment of Federal Estate Tax obligations as recently amended by the Tax Reform Act of 1976 effecting qualifications for closely held business interested as reamended under Code Section 267 (c) (4).

Matters raised under the Lane Case being 5 U.S.C. §702; 28 U.S.C. §1331, 1361; 26 U.S.C. §7421(a).

Article I, §8, Clause 18 of the Constitution as recognized in the First National Bank of Bay City Opinion by Chief Justice White with Mr. Justice Van Devanter dissenting citing the Act of June 3, 1864 as stated on pgs. 430 and 431 of 244 U.S. 416 with Mr. Justice Day concurring in the dissent & Ohio R.C. 2109.44.

STATEMENT

Since the Passage of the Federal Reserve Act of 1913 as affirmed in the 1917 case *First National Bank of Bay City v. Fellows-National Banking Institutions* have been granted the power to engage in appropriate functions to compete with Rival State Corporations. Additionally, Section 11(k) provided for permits to be granted to National Banking Institutions to act as Trustee, Executor, Administrator, . . . in First National Bank drawing upon the very elder propositions of *McCulloch v. Maryland Andosborn v. Bank* that there is a natural connection between the business of banking and the carrying on of Federal

Fiscal Operations. There is none . Apparently, between such operations and the business of settling estates . . . (244 U.S. 423). Further . . . this being so, there is in the legislation a direct invasion of the sovereignty of the state which controls not only the devolution of estates of deceased persons and the conducting of private business within the state, but as well the creations of corporations and the qualifications and duties of such as may engage in the business of acting as trustees, executors and administrators. Such an invasion the court may declare and may prevent by its order operating upon the offending agency. . . .(244 U.S. 423). Thus, the power to operate in the state probate court was confirmed as a matter of Federal Constitutionality when petitioner's grandfather was yet in his early years. Petitioner therefore contends that because of the prior decisions of this court and the interests of the United States in the subsequent enactment and collection of Federal Estate tax by Congress provide an ample basis for the court to exercise its jurisdiction in granting a *Writ of Certiorari* to the Court Of Appeals For Montgomery County, Ohio.

THE PROCEEDINGS IN THE CASE

William Kuntz, Sr. died on March 5, 1983. A resident of Montgomery County, Ohio. At the time of his death he was the Chairman of North Central Mortgage Corporation. A packager of VA and FHA Loan and Commercial mortgage maker, a Director of the Peter Kuntz Lumber Company and a Director of Scioto Savings And Loan, A state chartered Savings Institution, a shareholder in all the foregoing and other affiliated lumber companies located in several midwestern states.

On March 11, 1980, William Kuntz, III, grandson of the deceased and Petitioner and Paul W. Heintz, an Officer and Director of the Peter Kuntz Lumber Company were appointed Co-Executors under the Will of the Deceased, admitted into probate. On September 11, 1980, several months after the commencement of the Administration of the Estate of the Deceased, William Kuntz, Sr. Winters National Bank and Trust

Company now, Bank-One Ohio's Largest Bank, made an application supported by several members of the Local Probate Bar representing the respective parties to remove Petitioner for among others failing to sell certain minority shares in the Estate of the Deceased and to dispose of the residence of the Deceased. Such application was clearly calculated to be heard on December 4, 1980 one day prior to the due date for the filing of a Federal Estate Tax Return in the Estate of the Deceased, William Kuntz, Sr.

Among other allegations made by the attorneys of the National Bank where the Petitioner had failed to sell certain securities including securities in Rival Financial Institutions being interests in North Central Financial Corporation and Scioto Savings and Loan, a State Chartered Institution, to the Peter Kuntz Company. In the proceedings held before Probate Judge Zimmers, among other facts established; it became apparent that Applicant, Winters National Bank And Trust Company, had made it filing over two weeks before any written offer was ever made to Petitioner by the Peter Kuntz Company of which Petitioners Co-Executor was an Officer and Director.

Further, it was established that several weeks after the Commencement of the Administration of the Estate a sensational crime widely reported in the local press occured at the residence of a doctor adjacent to the residence of the Deceased in Dayton, Ohio. It was further established in the hearing that Petitioner was of the opinion that this publicity had adversly effected the marketability of the Residential Real Estate in the Estate of the Deceased. Without further elaboration at this point Petitioner proposes that the Applicant, Winters National Bank And Trust Company, apparently engaged in collusion as it would be otherwise impossible to establish how Petitioner would be expected to have failed to accept an offer he had not yet even received.

The necessity of having documents reduced to writing has long been established as a matter of legal significance.

"The English Statue of Frauds, which was enacted in 1676 and which became effective in 1677," provides in part that "all

declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing."

In the present case Petitioners trustee, Winters National Bank And Trust Company, was complaining of Petitioners failure to act where to an observing eye there could not have been an operative offer made prior to the action to turn the administration of the estate to the banks own ends in seeking Petitioners removal.

Further, the record is devoid of any manifestation that Petitioner had been provided with any factual financial data where he might make an informed Judgment that the law would require a fudicary. Further, "the existence of collusion implies the existence of fraud," McKenna: *Wheeler v. Denver*, 229 U.S. 342, 350.

"Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibition" Frankfurter, *Sec. v. Chenery*, 318 U.S. 80, 92.

Petitioners trustee being of considerable financial stature has

> "the advantage of prolonged litigation lies with the party able to bear heavy expenses." Brandeis: *Crowell v. Benson*, 285 U.S. 22, 94

In the proceedings before Judge Zimmers it was Petitioners contention that the tax payable to the Federal Government was open to a review of making several favorable elections as established by Congress. This is well established.

> "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted," Sutherland: *Gregory v. Helvering*, 293 U.S. 465, 469"

As Petitioner has now been removed by the assembled members of the Local Probate Bar he cannot seek an independent Federal review of the tax matter as espoused in the case of *Lane*

v. United States, 822 U.S.T.C. 13, 473 Where the District Court did not have any jurisdiction to enjoin the Secretary of the Treasury from addressing the closely held business Estate Tax Treatment that this Petitioner contends is available in this Estate matter. As established in the direct testimony in the hearing before the probate court that Petitioner had made the proper protective election to preserve the possible tax savings notwithstanding the efforts of the bank. It was also clear that no other beneficiary made any appearance or was represented by counsel. Petitioner is of the belief that the trustee now Administrator, Winters National Bank and Trust Company, does or cares little for any favorable tax treatment for the Estate of the Deceased, William Kuntz, Sr. Those driving motives behind the effort of the Winters National Bank And Trust Company are more fully addressed in Appendix (XX) and reflect the basis for the subterfuge engaged in by the "trustee".

With regards to the Residential Property the record does not speak to the private motive of the Petitioner in seeking an rearrangement of the affairs of the Estate. Petitioner as a beneficiary at any time on his request required the residence to be held for his individual benefit.

> "Where the trust property is real property and the interest if the beneficiary is an interest in fee, has interest descends as real property". . .
> Scotts Abridgement of the Law of Trusts 264 13.1

Wherein the interest of petitioner'saunt was somewhat different

> "Where, however, although the trust property is real estate, yet the interest of the beneficiary is limited to a term of years, his interest is personal property."
> Scotts ibid

If Petitioner had wished the residential property for his own, why would he construct such a complex transaction when in fact he had the right as a beneficiary to obtain the property on request. Petitioner contends that his proposed transaction was a sound response in light of the impairment to the property caused by the sensation that occured next door.

"Few formulas are so absolute as not to bend before the blast of extraordinary circumstances"
Cardozo: *Evangelical Luth. Church v. Sablem*, 254 N.Y. 161.167

Having established that the proposed transaction was not dissimilar to one that was conducted between the interests of Petitioners grandmother who died five years prior to these events, Winters National Bank and Trust Company, Petitioners Aunt and this same company it is inconsistent that the National Bank now object to what it had condoned, even directed in the prior transaction that was the basis for this proposal to fund the estate with the funds that were available in the trust account from the proceeds of life insurance policies that were paid upon the death of William Kuntz, Sr.

In compliance with the section of Ohio Law Appendix (A-1) and the language of the trust document appendix (A-2) Petitioner only sought what the law provides.

GRANTING

Petitioner contends that it is vital to the integrity of the administration of the estate that review be granted at this stage in the proceeding.

Once the present administrator Winters National Bank & Trust Company has paid over the taxes and added its numerous charges the estate will be considerably depleted. Petitioner's remedies will almost certainly be reduced to a suit for damages against the trustee-administrator Winters National Bank & Trust Company. He will be denied the benefit that was the intent of the bestower in seeking to balance the interest of the beneficiary with that of Mr. Heintz and The Peter Kuntz Company of which this estate is the largest single shareholder. Thus, a multiplicity of litigation will ensue such that the concept of Judicial economy will be ignored and that the Trustees, Winters National Bank & Trust Company, created by Congress, will be able to prevail by economic coercion.

It should be noted that the bank is neither an heir nor an other interested party except by designation of the testator.

> "The taking of possession of inherited property is one of the most ancient subjects of taxation known to the law."
>
> Stone: *Fernandez v. Weiner*, 326 U.S. 340, 353

Thus, when it was established that Congress could invade State Law and Sovereignty as affirmed in *First National Bank of Bay City*, a logical proposition would follow and as such an Article III controversy rightly exists. As the fundamental purpose of litigation is to resolve disputes, or as in this case there are mixed State and Federal interplay'sthat comprise current estate administration it would be patently unfair to allow a National Banking Institution to arrive at a result contrary to the intent of Congress without the check of Independent Federal review when the United States has a substantial interest.

> "The end of litigation is justice. Knowledge of the truth is essential thereto."
> Brewer: *Union Pacific Railway v. Botsford*, 141 U.S. 250, 258

When the tax laws of this Country prohibit underpayment, it should not condone overpayment when such is contrary to the legislation of Congress in these tax matters. No surcharge or other levy was sought against petitioner. Merely his removal for failing to sell to other family members shares of stock.

> "Historical ties and associations combined with strategic holdings of stock, can on occasion serve as a potent substitute for obvious modes of control.
> Murphy: *North American Co. v. SEC*, 327 U.S. 686, 693

> "The whole problem of the relation between parent and subsidiary corporation is one that is still enveloped in the mists of metaphor"
> Cardozo: *Berkey v. Third Ave. Co.*, 244 N.Y. 84, 94

As such:

> "The idea that the capital of a corporation is a football to be thrown into the market for the purposes of speculation, that its value may be elevated or depressed to advance the interests of its managers, is a modern and wicked invention"
> Hunt: *Upton v. Tribilock I. Otto*, (91 U.S.) 45, 48

Such as stated in petitioners appendum there lies the basis for granting Petitioners a Writ with regards to the conduct of Winters National Bank & Trust Company.

> "Men do not usually employ so much labor for nothing. If they use mystery without an object, they must expect to excite suspicion. To do away with that suspicion they ought to show an object."
> Marshall: *Locke v. United States*, 7 Cranch (11 U.S. 339, 347)

> "Pious protestations and smug preambles but intensify distrust when men are found busy with schemes to enrich themselves through circumvention"
> McKenna: *Maple Floor Mgf. Assoc. v. United States*, 268 U.S. 563, 587

> "The Constitution of the United States does not secure to anyone the privilege of defrauding the public"
> Harlon: *Plumley v. Massachusetts*, 155 U.S. 461, 479

> "Any who wield a large amount of power should always feel the check of power. The very principle on which the nation exists is that no person shall rise above power"
> Justice Brandeis
> *Other People's Money*

> "It is most true that this court will not take jurisdiction if it should not, but it is equally true that it must take jurisdiction if should. . . We have no more right to decline the exercise of jurisdiction which is given.

> The one or the other would be treason to the Constitution.
> Marshall: *Cohens v. Virginia*, 6 Wheat (19 U.S.) 264, 404

Wherefore, petitioner prays that this application be granted.

APPENDIX

APPENDIX A

Section 2109.44 Ohio Revised Code

Fiduciaries not allowed to have dealings with the Estate; exception.

Fiduciaries shall not buy from or sell to themselves nor shall they in their individual capacities have any dealings with the Estate, except as expressly authorized by the instrument creating the trust and then only with the approval of the Probate Court in each instance; but, no Corporate Fiduciary shall be permitted to deal with the Estate, any power in the instrument creating the trust to the contrary notwithstanding. This section does not prohibit a fiduciary from making an advancement when such advancement has been expressly authorized by the instrument creating the trust or when the probate court approves.

APPENDIX B

SECTION I

Revocable Living Trust Agreement between William Kuntz, of Montgomery County, Ohio, and Winters National Bank and Trust Co. at Dayton, Ohio.

To make loans, secured or unsecured, to the Grantor's Estate with liability for the non-payment thereof.

SECTION K

. . . Or to insure the prompt payment of Taxes . . .

APPENDIX C

AFFIDAVIT OF WILLIAM E. COHEN C.P.A.

Case 231191 Docket 290 Page 591
Probate Court-Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, William E. Cohen, first being duly cautioned and sworn all according to law, depose and state as follows:

1) In the spring of 1981 while being employed by Alexander Grant and Company, CPA's, at the request of the attorney for William Kuntz III, being IRV Zipperstein Esq., 20 West Monument Street, Dayton, Ohio, I reviewed the financial date of the Estate of William Kuntz.

2) I was asked to determine whether or not provisions of I.R.S. REGULATIONS Section 6166, etc, would apply.

3) It appeared that the stock of the Peter Kuntz Company and subsidiaries exceeded the statutory requirements of the I.R.S. Code 6166, etc, and that an election to defer substantial estate taxes was available.

4) Further affiant sayeth naught.

William E. Cohen /s/

Sworn to and before me and subscribed in my presence by said William E. Cohen this 22nd day of February, 1983

J.F. Towle, *Notary* /s/

APPENDIX D

Rule 12 of the Rules of Probate

Description and valuation of stock in Decedants Estate inventory in the schedule of assets from § six . 1 to be filed in a Decendant Estate every itemized listing of corporate stock, must be proceeded by one of the following symbols . . .

. . . What is commonly known as a close corporation must be proceeded by CC and it must be valued by a duly appointed an qualified appraiser.

APPENDIX E

AFFIDAVIT OF ROBERT L. STEELE, C.P.A.

Case 231191 Docket 290 Page 591
Probate Court—Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, Robert L. Steele, having been first duly cautioned and sworn all according to Law, depose and state as follows:

1) I was duly appointed a special appraiser for the estate of William Kuntz which was confirmed by entry on August 22, 1980.

2) That the Appraisers met on the 16th of July, 1980 in the offices of the Peter Kuntz Company at 120 West Second Street, Dayton, Ohio, for a presentation by Mr. Heintz as to the values of the Common Stock of the Peter Kuntz Company.

3) The presentation was made for the Peter Kuntz Company for the year ending Oct. 31, 1979. The year prior to the date of death of the deceased.

4) That the Appraisers met again on the 22 of July, 1980 at 3481 Office Park Drive, Dayton, Ohio and there decided the value of the 7,670 shares of the common stock of the Peter Kuntz Company in the estate of William Kuntz.

5) I do not recall being further contacted by the Winters Bank with regard to the other shares in the estate.

6) Further, affiant sayeth naught.

Robert Steele /s/

Sworn to and before me and subscribed in my presence by said Robert L. Steele this the 21st day of February, 1983

S.J. Buzza, Notary /s/

APPENDIX F

AFFIDAVIT OF WILLIAM KUNTZ, III

Case 231191 Docket 300 Page
Probate Court—Montgomery County, Ohio

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, DECEASED

I, William Kuntz, III, being first duly cautioned and sworn all according to law, depose and state as follows:

1) I am the removed Executor in the Estate of William Kuntz, and Beneficiary of the Estate and Trust Administered by Winters National Bank and Trust Company.

2) In preparation for filing objections to the accountings of the Estate herein, I obtained from Third National Bank and Trust Company the records pertaining to the transfer of $13,469,085.20 with regards to North Central Mortgage Company.

3) That the Deceased, William Kuntz, was Chairman of North Central Mortgage Company.

4) In preparation for these objections filed herein, I requested an audited financial statement from the Accountants for North Central Financial Corporation. Formerly known as North Central Mortgage Company. Which was declined at the direction of the Officers of North Central.

5) Further I requested the gross revenues and total mortgage servicing portfolio of North Central for the Fiscal Year 1980, which was declined.

6) That it is to the best of my knowledge that the gross revenues of North Central exceeded $80,000,000 in 1980 and the Mortgage Portfolio exceeded $325,000,000 in 1980.

7) To the best of my knowledge, this transaction resulted in a book value lost to the estate's interest in the Peter Kuntz Company and the shares of North Central Financial Company for-

merly known as North Central Mortgage Company, of approximately $1,077,526.80

8) Further, that Winters National Bank and Trust Company, as the lead banking institution, received for itself and for the account of others a sum in excess of $7,302,610.70. As attached hereto and marked Exhibit '1' through '6', being copies of wire-transfers from Third National Bank and Trust Company to parties this sale.

9) Further, affiant sayeth naught.

William Kuntz, III /s/

Sworn to and before me and subscribed in my presence by the said William Kuntz, III, this 22nd day of February, 1983

V.L. Georgeff, Notary /s/

Office - Supreme Co. U.S
FILED
FEB 6 1984
ALEXANDER L. STEVAS.
CLERK

No. 83-1159

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

In The Matter of The Estate of
WILLIAM KUNTZ

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT MONTGOMERY COUNTY, OHIO

WILLIAM KUNTZ, III
Pro Se
P.O. Box 461
Lake Placid, New York 12946-0461
1-800-824-7888

(For Further Appearances See Reverse Side Of Cover)

James T. Lynn, Jr.
Attorney for the Estate
First National Plaza, 14th Floor
Dayton, Ohio 45402
(513) 224-1981

Robert B. Crew
Joseph P. Buchanan
Attorneys for Winters National Bank and Trust Co.
2800 Winters Bank Tower
Dayton, Ohio 45402
(513) 223-6211

David S. Ginger
Attorney for Paul W. Heintz
267 Regency Ridge
Dayton, Ohio 45459
(513) 434-7114

TABLE OF CONTENTS

	PAGE
Application for Removal of Executor	SA-1
Findings of Fact and Conclusions of Law (Decision of Judge Zimmers)	SA-3
Decision of Court of Appeals of Montgomery County, Ohio	SA-12
The National Law Journal Article	SA-19
Inventory and Appraisal	SA-20

IN THE PROBATE COURT OF
MONTGOMERY COUNTY, OHIO

In the Matter of the Estate of WILLIAM KUNTZ, deceased

Case No. 231191
Docket 290
Page 179

APPLICATION FOR REMOVAL OF EXECUTOR

Applicant, WINTERS NATIONAL BANK AND TRUST CO., as Trustee, says that William Kuntz, III and Paul W. Heintz are the duly appointed, qualified and acting co-executors of decedent's estate. Applicant asks that William Kuntz, III be removed from the position as a co-executor for the following reasons:

1. The co-executor, William Kuntz, III, is residing in the residence property at 4340 Delco Dell Road which is part of the residue devised to applicant and has refused to take any steps to sell the residence property for the benefit of the estate and the interests of the trust demands such a sale.

2. The co-executor, William Kuntz, III, has neglected or refused to sell the 1210 preferred shares of The Peter Kuntz Company to the Company at the price agreed to between the Company and certain persons of which decedent was such a person and the interests of the trust demands such a sale.

3. The co-executor, William Kuntz, III, has neglected or refused to sell the 18 shares of various lumber companies set forth in the inventory and appraisal at a value of THREE HUNDRED AND NO/100 DOLLARS ($300.00) each to the parent company at a price substantially in excess of the appraised value as the interests of the trust demands.

ROBERT B. CREW
Cowden, Pfarrer, Crew & Becker
2580 Winters Bank Tower
Dayton, Ohio 45423
513-223-6211
Attorney for Winters National Bank And Trust Co., as Trustee

I hereby certify that a copy of this Application was mailed to James T. Lynn, Attorney for the Executors on September , 1980.

Filed: September 11, 1980 9:55 A.M.
Probate Court
Judge Zimmers
Montgomery Co., Ohio

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

In the Matter of the Estate of WILLIAM KUNTZ

CASE NO. 231191
Docket 290
Page 290

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard on the Exceptions to Inventory and Appraisal, Application for Removal of Executor, and the pleadings and Court papers filed herein, and the Court having reviewed the pleadings and Court papers herein and heard the evidence, and William Kuntz III, Co-Executor, having filed his motion for separate findings and conclusions of law, the Court, therefore, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. William Kuntz died March 5, 1980, a resident of Montgomery County, Ohio.

2. The Last Will and Testament of William Kuntz was admitted to probate in the Probate Court of Montgomery County, Ohio, and Paul W. Heintz and William Kuntz III were appointed Co-Executors under said Will on March 11, 1980.

3. Under the terms of the Last Will and Testament of William Kuntz, deceased, the net residuary estate of said decedent was bequeathed and devised to the Winters National Bank and Trust Co. as Trustee for the benefit of said decedent's daughter, Mary Ann Kuntz Dillon, and grandson, William Kuntz III.

4. On September 11, 1980, the Winters National Bank and Trust Co. as Trustee filed its application for removal of William Kuntz III as Co-Executor of said estate and filed exceptions to the inventory and appraisal filed in said estate.

5. The decedent, William Kuntz, was the owner of the fee interest in the residence located at 4340 Delco-Dell Road, Kettering, Ohio, at the time of his decease and under the Last Will and Testament of said decedent said residence property passes as a part of the net residuary estate to the Winters National Bank and Trust Co., as Trustee.

6. William Kuntz III has since the date of his appointment as Co-Executor been in sole possession and control of said residence located at 4340 Delco-Dell Road without cost to himself.

7. William Kuntz III has submitted bills for the payment of utilities and maintenance of said residence which have been paid by the estate.

8. Paul W. Heintz as Co-Executor of said estate has requested of William Kuntz III that said residence be rented or sold and William Kuntz III has failed to make any bona fide effort to sell or rent said premises.

9. Paul W. Heintz as Co-Executor has requested of William Kuntz III that said residence be transferred to the Winters National Bank and Trust Co. as Trustee pursuant to the Will of said decedent, but William Kuntz III has failed and refused to make such transfer.

10. It is in the best interest of the estate or said decedent that said real estate located at 4340 Delco-Dell Road be sold or transferred to the Winters National Bank and Trust Co. as Trustee.

11. At the time of his death, William Kuntz was the owner of 1,210 shares of the preferred stock of The Peter Kuntz Co. Said stock was appraised in the Inventory and Appraisal filed herein at $45.00 per share.

12. Said preferred stock has a par value of $100.00 per share and pays a dividend of 5%. Said dividend has been paid at the rate of $5.00 per year and the dividend has never been passed.

13. Said preferred stock owned by the decedent and held by the estate represents only approximately 8% of the total of such preferred stock issued and outstanding.

14. Said preferred stock is closely held, is not publicly traded, and has no market.

15. On August 24, 1970, the Board of Directors of The Peter Kuntz Co. passed a resolution in form as follows:

> "Now, Therefore, it is hereby agreed that in the event of the death of any preferred stockholder should his or her estate desire to have the company purchase his or her stock, that this company obligates itself to purchase at par all such preferred stock as may be presented to it for purchase; and . . .

Said resolution remains in full force and effect.

16. The Peter Kuntz Co. has offered to redeem the preferred shares of stock of The Peter Kuntz Co. held by the estate at $100.00 per share.

17. Paul W. Heintz as Co-Executor repeatedly requested of William Kuntz III that the estate accept the offer of The Peter Kuntz Co. and sell said preferred stock to The Peter Kuntz Co. at $100.00 per share. However, William Kuntz III has failed and refused to accept the offer of The Peter Kuntz Co. to redeem said preferred stock without any justifiable cause.

18. It is in the best interest of the estate of said decedent that said preferred stock be redeemed at $100.00 per share.

19. At the time of his death, William Kuntz was the owner of one (1) share of the common stock of each of twenty-one (21) different subsidiary companies of The Peter Kuntz Co.; was the owner of one-ninth (⅑) of one (1) share of one (1) subsidiary company of The Peter Kuntz Co.; and was the owner of one (1) share of preferred stock of two (2) different subsidiary companies of The Peter Kuntz Co.

20. Said subsidiary stocks were appraised in the Inventory and Appraisal filed herein at a total value of $5,912.

21. Said subsidiary stocks owned by the decedent and held by the estate represents less than 1% of the total issued and outstanding stocks of each of such subsidiary corporations.

22. Said subsidiary stocks are closely held, are not publicly traded, and have no market.

23. The Peter Kuntz Co. made a verbal offer to purchase all of said subsidiary stocks from the estate for $80,000, which offer was confirmed in writing by the President of The Peter Kuntz Co. on September 23, 1980, and on October 1, 1980, by letter to William Kuntz III, said offer to remain open until December 6, 1980.

24. Paul W. Heintz as Co-Executor repeatedly requested of William Kuntz III that the estate accept said offer of The Peter Kuntz Co. to purchase all the subsidiary stocks for a total of $80,000. However, William Kuntz III has failed and refused to accept said offer without any justifiable cause.

25. It is in the best interests of the estate of said decedent that said subsidiary stocks be redeemed for $80,000.

26. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely filing of a Federal Estate Tax Return on behalf of the estate, without justifiable cause.

27. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely payment of the Federal Estate Tax, without justifiable cause and such tax remains due and owing.

28. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, to redeem a U.S. Government bearer bond having a value of $39,000, and bearing interest at 3½% per annum, but which is redeemable at par value of $60,000 in payment of the Federal Estate Tax, without justifiable cause.

29. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely filing of an Ohio Estate Tax return, without justifiable cause.

30. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely payment

of the Ohio Estate Tax, without justifiable cause. Such tax remains due and owing.

31. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely filing of the decedent's 1980 federal income tax return due April 15, 1981, without justifiable cause.

32. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely payment of the decedent's 1980 income tax, without justifiable cause. Such tax remains due and owing.

33. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in obtaining an extension for the filing of the decedent's 1980 federal income tax return, without justifiable cause.

34. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the payment of the decedent's 1980 personal property tax, without justifiable cause. Such tax remains due and owing.

35. William Kuntz III has failed and refused to cooperate with his Co-Executor, Paul W. Heintz, in the timely filing and payment of the estate's federal income tax return and income tax, without justifiable cause.

36. William Kuntz III has refused and failed to cooperate with his Co-Executor, Paul W. Heintz, in the timely payment of the real estate taxes due on the decedent's real estate located at 4340 Delco-Dell Road, Kettering, Ohio. Such taxes remain due and owing.

37. William Kuntz III has refused and failed to cooperate with his Co-Executor, Paul W. Heintz, in the transfer of the title of the 1969 Lincoln owned by the decedent, which title is in the name of the estate.

38. William Kuntz III has submitted repair bills on said 1969 Lincoln, authorized by him, for payment by the estate, said bills totaling more than double the appraised value of said automobile as set forth in the Inventory and Appraisal filed herein.

39. William Kuntz III submitted a bill to the estate for payment by the estate from Meyer's Meat Market, a grocery store, without any itemization, in excess of $1,000, for Clorox, baking soda, and a six pack of beer.

40. William Kuntz III, Co-Executor, attempted to purchase the decedent's real estate at 4340 Delco-Dell Road, Kettering, Ohio, through a corporation owned solely by him.

41. William Kuntz III has carried in his briefcase for a period of months in excess of $250,000 in securities in bearer form without justifiable cause even though the estate owns four (4) safe deposit boxes.

42. Without notice of change of address to the Court, William Kuntz III maintains a fictitious and non-existing mailing address.

43. Paul W. Heintz, Co-Executor, submitted to the Court his Conditional Resignation as Co-Executor, as filed with the Court on April 16, 1981.

CONCLUSIONS OF LAW

A. The Court has jurisdiction of the subject matter and over the parties before the Court.

B. William Kuntz III, Co-Executor, is in violation of the fiduciary "self-dealing" prohibitions of Section 2109.44 ORC.

C. The Court has the authority to, is compelled to, and does hereby remove William Kuntz III as Co-Executor of the estate pursuant to Section 2109.44 ORC, because of neglect of duty, and because the interests of the trust demand it.

D. The Court has no authority to, and does hereby, accept the Conditional Resignation of Paul W. Heintz, Co-Executor, upon the terms and conditions set forth therein.

E. The Exceptions to the Inventory are well taken and must be sustained.

F. The Application for Removal of William Kuntz III as Co-Executor is well taken and is granted.

It is so ordered, and counsel for Winters National Bank and Trust Co. will submit the appropriate judgment in accordance.

Neal F. Zimmers
Probate Judge

Copies of the Findings of Fact and Conclusions of Law were sent to the parties listed below by ordinary mail this date of filing: James T. Lynn, Jr., Attorney for the Estate of William Kuntz, 1400 One First National Plaza, Dayton, Ohio 45402; Joseph P. Buchanan, Attorney for Winters National Bank and Trust Co., Trustee, 2580 Winters Bank Tower, Dayton, Ohio 45423; David S. Ginger, Special Counsel for Paul W. Heintz, Co-Executor, 2100 First National Bank Building, Dayton, Ohio 45402; and Irvin J. Zipperstein, Special Counsel for William Kuntz III, Co-Executor, 20 West Monument Avenue, Dayton, Ohio 45402.

**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, OHIO**

IN THE MATTER OF THE ESTATE OF WILLIAM KUNTZ

CASE NO. 23119
Docket 290

ENTRY

This cause came on to be heard on the exceptions to the Inventory filed by the Winters National Bank and Trust Co., as Trustee, and said Trustee's application for the removal of William Kuntz, III as Co-Executor of the estate of William Kuntz, deceased. The Court, upon consideration of the evidence adduced at the hearing on said exceptions and application, and arguments of counsel, finds that said exceptions to the Inventory are well taken and they are hereby sustained, and that said application to remove William Kuntz, III as Co-Executor of said estate should be granted.

It is, therefore, by the Court, ORDERED, that William Kuntz, III be, and he hereby is, removed as Co-Executor of the estate of William Kuntz, deceased.

It is further ORDERED that the Conditional Resignation of Paul W. Heintz, Co-Executor of the estate of William Kuntz, filed herein on April 16, 1981, be accepted upon the terms and conditions set forth therein.

It is further ORDERED that William Kuntz, III and Paul W. Heintz file their final account with the Court within ten (10) days from the date of the filing of this Entry.

It is further ORDERED that the Winters National Bank and Trust Co. be appointed Executor of the estate of William Kuntz, deceased, upon the filing of the final account by William Kuntz III and Paul W. Heintz as hereinabove ordered.

It is further ORDERED that Paul W. Heintz continue to serve as Executor of the estate of William Kuntz, deceased,

until such time as the Winters National Bank and Trust Co. is appointed Executor of the estate of William Kuntz, deceased.

APPROVED:

_____

JUDGE

_____

James T. Lynn, Jr.
Attorney for the Estate

_____

Irvin J. Zipperstein
Attorney for William Kuntz, III

_____

David S. Ginger
Attorney for Paul W. Heintz

_____

Joseph P. Buchanan
Attorney for Winters National
Bank and Trust Co.

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

IN THE MATTER OF THE ESTATE OF
WILLIAM KUNTZ, SR., DECEASED

CASE NO. 7355

OPINION
Rendered on the 19th day of May, 1983

JAMES R. KIRKLAND of BIEGEL, KIRKLAND & BERGER CO., L.P.A., Suite 518, 111 West First Street, Dayton, Ohio 45402
Attorney for Appellant, William Kuntz, III

JOSEPH P. BUCHANAN of COWDEN, PFARRER, CREW & BECKER, 2580 Winters Bank Tower, Dayton, Ohio 45423
Attorney for Winters National Bank & Trust Co.

JAMES T. LYNN, JR. of YOUNG, PRYOR, LYNN & JERARDI, 1400 One First National Plaza, Dayton, Ohio 45402
Attorney for Estate of William Kuntz, Sr., Deceased

DAVID S. GINGER of ESTABROOK, FINN & McKEE, 1520 One First National Plaza, Dayton, Ohio 45402
Attorney for Paul W. Heintz

SHERER, J. (By Assignment)

William Kuntz Sr., a resident of Montgomery County, died testate and named his grandson, William Kuntz, III, and Paul Heintz, Chief Financial Officer and Treasurer of Peter Kuntz Co., as co-executors.

The will admitted to Probate on March 11, 1980, bequeathed and devised to Winters National Bank, as Trustee, the net residuary estate of decedent for the benefit of decedent's daughter, Mary Ann Kuntz Dillon and decedent's grandson, William Kuntz, III. William Kuntz, III and Paul Heintz were appointed as co-executors.

The decedent was the owner of a residence property at 4340 Delco Dell Road and the following other property, among other holdings:

(1) 1210 shares of preferred stock of Peter Kuntz Company

(2) one share of the common stock of twenty one different subsidiary companies of Peter Kuntz Co.

On September 11, 1980 Winters Bank as Trustee filed an application in the Probate Court seeking the removal of William Kuntz, III as executor for the following reasons:

"(1) The co-executor, William Kuntz III, is residing in the residence property at 4340 Delco Dell Road which is part of the residue devised to applicant, Winters Bank and has refused to take any steps to sell the residence property for the benefit of the estate and the interests of the trust demands such a sale.

(2) The co-executor, William Kuntz III, has neglected or refused to take any steps to sell the 1210 preferred shares of the Peter Kuntz Co. to the company at the price agreed to between the company and certain persons of which decedent was such a person and the interests of the trust demands such a sale.

(3) The co-executor, William Kuntz, has neglected or refused to sell the 18 shares of various lumber companies set forth in the inventory and appraisal at a value of Three Hundred and 00/100 dollars each to the parent company at a price substantially in excess of the appraised value as the interests of the trust demands."

After trial of the application of Winters to remove Kuntz as Executor, the Probate Court made findings of fact and conclusions of law at the request of Kuntz on May 1, 1981 and on May 1, 1981, the Court rendered judgment on its findings and conclusions removing William Kuntz III as Executor; appointing Winters National Bank as successor Executor and found that

exceptions of Winters Bank as Trustee to the Inventory and Appraisal were well taken.

Upon the findings of fact stated, the Probate Court concluded as a matter of law that (B) William Kuntz III is in violation of the fiduciary "self dealing" prohibitions of R.C. 2109.44.

Such section, in pertinent part, provides:

> "Fiduciaries shall not buy from or sell to themselves nor shall they in their individual capacities have any dealings with the estate, except as expressly authorized by the instrument creating the trust and then only with the approval of the probate court in each instance; . . . . This, section does not prohibit a fiduciary from making an advancement, when such advancement has been expressly authorized by the instrument creating the trust or when the probate court approves."

The Probate Court further concluded as a matter of law (C), "that the court has the authority to, and does hereby remove William Kuntz III as co-executor of the estate pursuant to Section 2109.44 Ohio Revised Code, because of neglect of duty and because the interests of the estate demand it.

The Court further concluded as a matter of law that:

> "(D) The court has the authority to and does hereby accept the conditional resignation of Paul W. Heintz, co-executor, upon the terms and conditions therein.
>
> "(E) The exceptions to the Inventory are well taken and must be sustained.
>
> "(F) The application for removal of William Kuntz III as co-executor is well taken and is granted."

On May 29, 1981, William Kuntz III filed a notice of appeal from the removal order, from the order appointing Winters National Bank as Executor, ordering that Paul Heintz continue to serve as Executor until Winters National Bank is appointed Executor and from the order finding exceptions to the inventory well taken.

The sole error assigned is that the Probate Court's removal of William Kuntz III as co-executor of the Estate of William Kuntz Sr. was against the manifest weight of the evidence and contrary to the Testator's intent.

Appellant first addresses the claim in the removal motion of Winters that he failed to take steps to sell the residence at Delco Dell Road and that he continues to live in such residence. Evidence of appellant's conduct with reference to that property resulted in these findings of facts by the Probate Court:

> (6) William Kuntz III has since his appointment as co-executor been in sole possession and control of said residence without cost to himself.
>
> (7) William Kuntz III has submitted bills for the payment of utilities and maintenance of said residence which have been paid by the estate.
>
> (8) Co-executor, Paul W. Heintz requested Kuntz to sell or rent the property and Kuntz made no bona fide effort to sell or rent the premises.
>
> (9) Co-executor Heintz requested Kuntz to transfer the residence to Winters Bank as trustee but Kuntz has failed and refused to do so.
>
> (10) It is in the best interest of the estate that such residence be sold or transferred to Winters Bank as trustee.

Appellant testified that he lived in the property in an attempt to conserve and protect it for the benefit of the estate; that he did yard work and cleaned it inside at an expense of $1000.00.

He testified, R. 11, that his first effort to sell the property consisted of a complex transaction between his aunt, Mary Ann Kuntz Dillon, a company he owned, Westminster Co. and Winters Bank as trustees and a Cincinnati Insurance Co. Its purpose was to relieve the estate of responsibility of owning real property and to fund the estate with cash being held by Winters in order to pay the federal estate tax liability. He drew the document, Ex. 1 and secured his aunt's signature. It was a letter of intent.

It was intended that his company, Westminster Co., and his aunt would purchase the property for $160,000.00. The date of the agreement was August 22, 1980.

The trial court, in Finding #40, found that William Kuntz III, co-executor, attempted to purchase decedent's real estate at 4340 Delco Dell Road through a corporation owned solely by him.

The appellant's conduct was not expressly authorized by the decedent's will and constituted self dealing in violation of R.C. 2109.44 as determined by the Probate Court. The evidence supports the court's determination.

Appellant testified that he had advertised the residence property for sale in the Dayton Daily News, Dayton Journal Herald, New York Times and in the Chicago Tribune; that he did not list the property with a realtor and that he had received no written offers. He admitted that Mr. Heintz had requested that the residence be transferred to Winters Bank as trustee but that he refused. At R. 152, appellant fixed the fair market value, of the residence at three or four hundred thousand dollars, maybe more, maybe less. He stated further that it was his understanding that the property should be put on the market and sold and the proceeds were to be held by the co-executors.

The Finding of the Probate Court, #8, finds that appellant's co-executor requested that the residence be sold or rented and that appellant had failed to make any bona fide effort to sell or rent the premises.

In its Finding #9, the Probate Court found that co-executor Heintz had requested appellant to transfer the residence to Winters Bank as trustee and that he had refused the request.

The next question to be determined is whether the evidence is sufficient to warrant the removal of appellant as co-executor pursuant to R.C. 2109.24 because he neglected his duty to sell 1210 shares of stock of The Peter Kuntz Co. and whether the interests of the trust demand it.

The evidence indicates that such stock was appraised and inventoried at $45.00 per share. The evidence indicates also that

the Directors of The Peter Kuntz Company some ten years before the death of decedent herein adopted a Resolution to the effect that upon the death of a preferred shareholder, should his estate desire to have the company purchase his preferred stock, the company would purchase the stock at par value, i.e. $100.00 per share. The evidence shows that the redemption price was applicable only to estates and that if such stock was transferred to the trustee, Winters Bank, the opportunity of the estate to realize $100.00 per share instead of $45.00 per share would be lost.

The Probate Court, in Finding of Fact #17, found that co-executor Heintz requested co-executor William Kuntz III to accept the offer of The Peter Kuntz Company and sell said preferred stock to The Peter Kuntz Company for $100.00 per share but that co-executor, Peter Kuntz III refused to accept the offer of The Peter Kuntz Company without any justifiable cause.

The Court's Finding # 16 found that the Peter Kuntz Company had offered to redeem said stock held by the estate at $100.00 per share.

Findings #16 and 17, are fully supported by the Record.

Next, we consider the question whether the Probate Court erred in finding and holding that William Kuntz III, as co-executor, neglected his duty to sell stock owned by William Kuntz, Sr. at the time of his death in several subsidiary companies of The Peter Kuntz Company and that such conduct warranted his removal as co-executor.

The evidence shows that William Kuntz Sr. owned one share of stock each in 23 subsidiary companies of The Peter Kuntz Company; that they were appraised and inventoried at $5912.00; that The Peter Kuntz Company offered to purchase said stock for $80,000.00, which offer was refused by appellant, William Kuntz III. The evidence shows that there is no known market for such shares and that The Peter Kuntz Company, as a matter of courtesy had adopted the policy of paying book value for such shares. The evidence shows that five brothers owned shares in

various subsidiary companies of The Peter Kuntz Company; that at the time of the death of two brothers that preceded the death of William Kuntz Sr., the company had purchased their shares at book value.

The evidence supports such findings and conclusions of the Probate Court.

In addition to the Findings of the court we have noted, the Probate Court found, Findings of Fact, 26, 27, that William Kuntz III failed and refused to cooperate with his co-executor, Paul Heintz in this timely filing of a Federal Estate Tax return on behalf of the estate without justifiable cause and that he failed to cooperate with his co-executor in the timely payment of the Federal Estate Tax without justifiable cause.

The evidence with respect to this issue does not show any bad faith on the part of William Kuntz III, as co-executor in failing to agree with Heintz as to the law applicable and could not be the basis for removal of such co-executor.

Upon the Record before us, we find no error in the action of the Probate Court in removing the appellant, William Kuntz as co-executor of the estate of William Kuntz Sr., deceased, because of his self dealing and for the reason that he neglected his duties as co-executor as hereinbefore set forth.

The judgment of the Probate Court will be affirmed.

WILSON, J. and WEBER J., concur.

(Judge Paul Sherer, Retired from the Court of Appeals, Second Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

James R. Kirkland
Joseph P. Buchanan
James T. Lynn, Jr.
David S. Ginger

ESTATE PLANNING

Section 6166

The 1976 Tax Reform Act gave the privilege to an estate that contained a closely held business meeting certain tests to pay its estate tax attributable to that closely held business interest over a period of 15 years, with interest only on the first five years at 4 percent with respect to the tax on the first $1 million of value and the tax itself over a 10-year period after that. To qualify, if the interest was in the form of a partner or a partnership, 20 percent or more of the total interest in the partnership had to be included in the decedent's gross estate, or it had to have 15 or fewer partners. If the interest was in a corporation, 20 percent or more of the value of the corporation's voting stock would have to be includable in the value of the decedent's gross estate, or the corporation would have to have 15 or fewer shareholders.

The 1978 act makes changes that will result in the qualification of more estates for this privilege. The act says any stock or partnership interest owned by the decedent's "family" within the meaning of Code Section 267(c)(4) will be treated as owned by the decedent, both for purposes of the number of shareholders or partners and the percentage test. "Family" in this context means that brothers' and sisters,' spouses,' ancestors' and lineal descendants' ownership in stock or partnership interests will be attributed to the decedent for purposes of the 20 percent test, or the number of shareholders or partners test, whichever is applicable. This applies after Dec. 31, 1978.

'56

(12)

PROBATE COURT OF MONTGOMERY COUNTY, OHIO

ESTATE OF WILLIAM KUNTZ, DECEASED

Case No 231191 Docket 290 Page 179

APPROVED

JOURNAL

INVENTORY AND APPRAISAL

The fiduciary says that to his knowledge the attached schedule of assets in decedent's estate is complete. The fiduciary further says that he determined the value of those assets whose values were readily ascertainable and which were not appraised by the appraiser, and that such values are correct.

The estate is recapitulated as follows:

FILED
PROBATE COURT
AUG 22 1980
NEAL F. ZIMMERS
PROBATE JUDGE

Tangible personal property	$ 15,650.00
Intangible personal property	$ 987,782.32
Real Estate	$ 165,000.00
Total	$ 1,168,432.32
Automobile transferred to surviving spouse under Revised Code § 2113.532(A)	$ N/A

A list of the surviving spouse, next of kin, legatees and devisees known to the fiduciary, which list includes those persons entitled to notice of the hearing on this inventory has been filed.

N/A

[Check if applicable] - ☐ The surviving spouse is the sole legatee and devisee under decedent's Will, and has not manifested an intention to take against it. It is therefore unnecessary to cite the surviving spouse to make an election.

FILED
PROBATE COURT
AUG 27 4 01 PM
NEAL F. ZIMMERS
PROBATE JUDGE
MONTGOMERY CO OHIO

William Kuntz, III

Paul W. Heintz

Co-Executors

APPRAISER'S CERTIFICATE

The undersigned appraiser agreed to act as appraiser of decedent's estate, and to appraise the property exhibited to him honestly, impartially, and to the best of his knowledge and ability. The appraiser further says that he appraised those assets whose values were not readily ascertainable, indicated on the attached schedule by a check in the column "Appraiser" opposite each such item, and that such values are correct.

Appraiser DAVID E. REESE

Appraiser THOMAS A. GILFOIL

(appraisers of the stock of the PETER KUNTZ COMPANY

Appraiser ROBERT L. STEELE, C.P.A.

911-269 FORM 6.0 INVENTORY AND APPRAISAL

note (appraisers of the stock of the Peter Kuntz Company)